IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5699 OF 2004
IN
CRIMINAL APPLICATION NO.4466 OF 2004
IN
CRIMINAL APPEAL NO.1238 OF 2004

Maruti Mahitpatrao Jathar ...Applicant.

V/s

The State of Maharashtra ...Respondent

Mr. P.L. Joshi for the applicant.

Mr. B.H. Mehta, APP for the respondent - State.

CORAM: V.M.KANADE,J.

DATE: 17th December, 2004

P.C.

1. Heard the learned Counsel appearing on behalf of the applicant and the learned APP for the respondent - State.

2. By an order dated 29/11/2004, the application for bail filed by the applicant was rejected after the learned APP was heard in the matter as the applicant's counsel was absent. Present application has been filed by the applicant pointing out that his counsel could not remain present on the said date as he was under the impression that the application was adjourned to 1/12/2004.

3. I have heard the learned Counsel appearing on behalf of the applicant on merits of the bail application. He has submitted that the case of the prosecution is not supported by the medical evidence. He has taken me through the evidence of the doctor who has stated that there was bruise on labia which was fresh and size of the bruise was 0.2 cm. x 0.1 cm. Apart from this injury, there was no other internal injuries on the private parts of both the prosecutrix. Prosecution case is that the accused lifted the girls and placed them on his lap. Doctor has stated that apart from these injuries there were no other injuries on her private parts. It is submitted that the medical evidence does not support the story of the prosecution of rape on the minor girls as the injuries would have been more severe.

4. In my view, there is considerable force in the submission made by the learned Counsel appearing on behalf of the applicant. Since on the earlier date, the learned Counsel was absent, he was not in a position to make his submission. In my view, if the accused had committed rape on the prosecutrix, injuries on the private parts would have been very severe. Thus the possibility of attempt to commit rape cannot be ruled out.

5. Applicant, therefore, under these circumstances, is directed to be released on bail in the sum of Rs 5000/- with one or two sureties in the like amount. Applicant, however, shall not enter jurisdiction of Vikroli Police Station, pending the hearing and final disposal of the appeal. Applicant, however, shall report to the Ghatkopar Police Station (West) twice in a month. Application is accordingly disposed of.

V.M. KANADE, J.